



# MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # 176-2006

## LETTER TO COMMISSION

TO: Mayor David Dermer and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: July 3, 2006

SUBJECT: 90-Day Report on the Implementation and Enforcement of the City's Noise Ordinance

This memorandum serves to provide you with a status report on the implementation of the new noise ordinance.

### **BACKGROUND**

As you are aware, the implementation of the provisions of the new noise ordinance began on March 18, 2006. In anticipation of the implementation of the ordinance, the following activities were initiated by staff:

- Modifications were made to the "off hours/weekend" voice response message for the Answer Center (305.604.CITY) to allow for the direct transfer of noise complaints during those periods to PSCU (police non-emergency)
- The Neighborhood Services Department's Code Compliance Division inspectors received over seven hours of training to ensure understanding of the elements of the ordinance and uniform enforcement
- New forms were created in order to meet the new enforcement criteria
- The existing database used to input and track code violations was modified to permit the entry of all complaints, and the resulting disposition (valid, not valid, verbal warning, written warning, violation)
- In order to address tracking and appropriate enforcement, the Code Compliance Division purchased software for their existing handheld computers that would interface with the current database, provide real-time information and status on complaints and subsequent enforcement action out on the field. The handhelds are fully functional
- Ensured code staffing every evening (7 days a week) to provide for continuity of enforcement
- An informational workshop/training session was conducted in partnership with the Hotel Association for its members (conducted before the start of Winter Music Conference)
- Information regarding the new noise ordinance was distributed through the CityPage (Miami Herald Neighbors) and MB Magazine

In addition, subsequent to the implementation of the ordinance, staff also modified the existing Permit Manager program available online (through [miamibeachfl.gov](http://miamibeachfl.gov)), to allow electronic inquiries on the status of all code compliance cases, including noise violations. An informational workshop/training was also held with Special Master staff to advise on the revised appeals process.

### **CURRENT STATUS OF NOISE ORDINANCE IMPLEMENTATION**

#### **Enforcement History**

For the reporting period of March 18, 2006, to June 18<sup>th</sup>, 2006, the department opened 857 noise violation cases. It is important to note that a large majority of those cases were complaint driven, with approximately only 4% (36) of the cases the direct result of a violation observed by a code

compliance officer during a routine patrol. Likewise, it is also very important to clarify that a significant percentage (68%) of the noise complaints made are deemed "not valid" (e.g. does not meet the thresholds for noise, as defined in 21-28, now incorporated into our code).

More specifically, of the 857 noise cases opened:

- 580 were not valid cases
- Of the 277 valid cases
  - 36 resulted in verbal warnings (no complaint; violation observed by code officer while on patrol)
  - 222 resulted in written warnings (complaint made; only 1 within a 24-hour period)
  - 19 resulted in violations (continued noise after a warning issued in a 24-hour period, or the use of all three available warnings, resulting in a violation)

The attached spreadsheet (**Attachment A**) provides a detailed breakdown of the noise cases opened during this 90-day period, including the percentage the different types of cases represent of the total number of cases opened. In addition, on the attached "**B**" please also find a breakdown of cases opened by type (e.g. construction, hotel, club/bar/restaurant/, retail, residential). *This spreadsheet reflects that the largest percentage of all valid noise cases - verbal, written or violations - were residential (59%).* This was followed by 21% of the valid noise cases originating at hotels and 17% at clubs/restaurants/bars. Attachment B also provides a breakdown of the number of multiple violations, by location type. As concerns with the impact of the noise ordinance on businesses was expressed during the noise ordinance discussion, it is important to note that nine businesses account for 14 of the 19 violations. As you can note, to date no business has met the threshold for the license suspension/revocation process.

For purposes of comparison, as reported to the Commission last September, during the period of October 2003 through September 2005, 4093 noise complaints were processed by Code Compliance using the previous enforcement process. Of those noise complaints, only 12 percent resulted in citations and were subject to the special master process or payment of fines. Under the current provisions, only two percent (2%) of the cases have reached violation stage during this 90-day period, thus subject to the Special Master's jurisdiction or payment of fines.

### **Major Event Periods**

A review has been conducted of the impact of the implementation of the new noise ordinance during major event periods, particularly those that tend to be noise producing. As previously referenced, the new noise ordinance went into effect on March 18, 2006, the weekend prior to Winter Music Conference (WMC). In the LTC issued on April 7, 2006 providing a recap of the 2006 Winter Music Conference MEP, we advised you that Code Compliance opened 209 noise cases during the conference period (a much longer conference period this year, which extended from Wednesday, March 22 - Tuesday, March 28, 2006). Fifty-four percent (54%) of the cases were deemed "not valid," and of the valid cases, they broke down as follows: 27 verbal warnings, 60 written warnings and 10 violations. As WMC is primarily event-driven, unlike the overall percentage of valid noise cases for the first 90-day period that reflects that the largest percentage of valid cases are residential in nature, 77% of the valid noise cases during WMC were opened for business violations. By comparison, during WMC in 2005, 15 noise violations were issued by Code Compliance.

Code Compliance reports that 22 valid noise cases were opened during Memorial Day Weekend 2006, representing one violation, one verbal warning and 20 written warnings. In 2005, a total of 2 violations were issued during the Memorial Day Weekend.

### **Appeals Process**

As provided for in the new ordinance, an appeals process has been established that provides due process for individuals and/or businesses that have received a noise violation. The Chief Special

Master has chosen to personally hear all cases. In the course of the few series of appeals to date, staff has identified language in the ordinance that may be interpreted to be inconsistent with the clear legislative intent of the City Commission. Minor adjustments have been recommended and approved at first reading, and will be considered by the Commission for second reading on July 12<sup>th</sup>.

More specifically, of the 19 violations issued, a total of 13 have been heard by the Special Master on appeal. The outcome of the special master cases is as follows: three appeals were denied as not timely, one appeal was withdrawn by the violator, the special master found in favor of the City in seven cases and a finding in favor of the appellant was made in three cases. In those three cases, the appeals were granted based on the Special Master's interpretation of the three warning limit language. This clarification is being addressed in the noise ordinance amendment scheduled for second reading. The current ordinance language, even though clear in intent, can be read to require four written warnings.

### ***Pending Issues***

In addition to amendments to the noise ordinance to provide clarification on intent, as you are aware, the administration has worked on other amendments to address issues relating to temporary construction, Sunday/holiday construction noise and residential written warnings. Additionally, legislation has been introduced to provide more severe penalties for valid noise violations that occur as part of an illegal commercial use of a single family home, in response to the commercial private party issue.

Lastly, the noise ordinance as adopted contains a provision regarding animal and bird noise. Staff has traditionally handled animal and bird noise through Chapter 10 of the Code. Chapter 10 prohibits any unreasonably loud noise from an animal or bird whereas, Chapter 46 requires the noise to be plainly audible from a distance of 100 feet from the building, structure or yard the animal is located in. Our Legal Department has advised us that we can issue citations under both provisions of the Code, including concurrent citations, as applicable.

### **CONCLUSION**

From a review of the first 90 days of activity, it would appear that the new noise ordinance is trending as previous experience has indicated: the majority of noise complaints are deemed not valid, and of valid complaints, most are residential in nature. The implementation of the ordinance has also experienced expected trends during busier periods, such as a greater number of cases opened during the first 30-day period that included Spring Break, as well as WMC (March 18-April 18), and half as many cases during the May-June reporting period that is less busy and has fewer events.

The new noise ordinance provisions were intended to, among other things, assist in reducing the incidence of excessive and unreasonably loud noises, while ensuring uniform and consistent enforcement. While it may be too soon to tell whether the incidence of noise has decreased in the City, we feel confident that the level of constant training and the clear parameters established in the ordinance have resulted in an improvement in the objective enforcement of noise in our community. Staff will continue to monitor the implementation of the noise ordinance.

Should you have any additional questions or concerns, please donot hesitate to contact me.

CITY CLERK'S OFFICE

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**Noise Ordinance Cases - History**  
**3/18/06 - 6/18/06**

**TOTAL NUMBER OF CASES OPENED = 857**

Noise Cases		
Action	Amount	% of Total
Not Valid	580	68%
Verbal Warnings	36	4%
Written Warnings	222	26%
Violations	19	2%
Total:		857 100%

## Noise Ordinance Valid Violation History

3/18/06 - 6/18/06

Valid Violations By Location Type (with Percent of Total)								
Location Type	Verbal Warning Total: 36		Written Warning Total: 222		Violation Total: 19		Total - Valid Violations Total: 277	
	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total
Clubs/Bars/Restaurants	14	39%	31	14%	3	16%	48	17%
Hotels	11	31%	36	16%	11	58%	58	21%
Retail	4	11%	4	2%	0	0%	8	3%
Residential	7	19%	151	68%	5	26%	163	59%
Totals	36	100%	222	100%	19	100%	277	100%

Breakdown - # of Locations w/Multiple Violations(by LocationType)					
	1 vio				
	1 vio	2 vios	3 vios	4+ vios	
Clubs/Restaurants/Bars	3	0	0	0	
Hotels	3	1*	2	0	
Retail	0	0	0	0	
Residential	3	0	0	0	
Construction	2	0	0	0	

\*Shine at the Shelbourne